

**Strategic Funding Source, Inc. v Ashley Home Care
Serv., LLC**

2019 NY Slip Op 30154(U)

January 14, 2019

Supreme Court, New York County

Docket Number: 650985/2016

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 45

Justice

-----X

INDEX NO. 650985/2016

STRATEGIC FUNDING SOURCE, INC.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

ASHLEY HOME CARE SERVICE, LLC, LANCE ASHLEY

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for

ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW

Upon the foregoing documents:

This action was commenced by Strategic Funding Source, Inc. against Defendants Ashley Home Care Service and Lance Ashley on February 26, 2016 alleging breach of contract, account stated and attorney's fees. Defendants filed an Answer on April 11, 2016.

Now before the Court is Amos Weinberg Esq.'s motion, brought by Order to Show Cause, to be relieved as counsel on behalf of Defendants. Mr. Weinberg cites unpaid legal fees and his clients' unwillingness to participate in discovery as his reasons for being unable to continue to work with Defendants. Weinberg Aff., ¶3-5 (NYSCEF 11). The Order to Show Cause was signed on December 3, 2018 and directed opposition, if any, to this requested relief be filed by December 21, 2018 and further provided that a copy of the Order to Show Cause and the supporting papers upon which it is based shall be served upon all Defendants by overnight and electronic delivery. Counsel filed affidavits of service attesting that copies were served upon the Defendants.

No opposition having been filed, this motion is unopposed. For the following reasons, the Court grants counsel's motion to withdraw as attorney of record for Defendants.

Mr. Weinberg asserts that there has been a breakdown in his relationship and communications with Defendants, due to their failure to remit payment for legal services as well as fees associated with a court-mandated mediation, rendering continued and effective representation of Defendants in this action impossible. *Weinberg Aff.*, ¶¶5-7. Supporting his motion, Mr. Weinberg summarizes letter and e-mail correspondence indicating that Mr. Weinberg advised Defendants that this matter was selected to participate in a mandatory mediation which would cost the parties \$400/hour. Mr. Weinberg also discussed various settlement options with Defendants. After two requests, Mr. Weinberg received no response from Defendants. *Id.*

Relieving counsel from its representation of a party is appropriate where, *inter alia*, there is adequate evidence showing a breakdown in the attorney-client relationship. *Robinson v Friedman Mgt. Corp.*, 49 A.D. 3d 436, 437 (1st Dep't 2008); *see also Bok v Werner*, 9 A.D.3d 318 (1st Dep't 2004) (reversing denial of motion to withdraw as counsel in view of counsel's claimed breakdown in relationship with client); *see also* Rule 1.16(c)(5) of the Rules of Professional Conduct (a lawyer may withdraw from representing a client when: the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees). Movant has done so. Given that the case is at an early stage, and no discovery schedule has yet been entered, Defendants should not be prejudiced by a change in counsel.

The Court concludes that Amos Weinberg, Esq. has made a sufficient showing of entitlement to withdraw as counsel for Defendants and his motion is Granted. Mr. Weinberg is directed to advise Ashley Home Care Service, LLC that, as a corporation, it must retain new

counsel and cannot appear *pro se*. See, CPLR §321(a). As for individually named Defendant Lance Ashley, Mr. Weinberg is directed to comply with his obligation under Rule 1.16(e) of the Rules of Professional Conduct as stated below.

It is therefore:

ORDERED that the motion of Amos Weinberg, Esq. to be relieved as attorney for Defendants in this action is granted without opposition, subject to the following conditions; it is further

ORDERED that Amos Weinberg, Esq. is to comply with its obligation under Rule 1.16(e) of the Rules of Professional Conduct, as applicable to the facts presented, to “take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules.”; it is further

ORDERED that, within 10 days from entry, Mr. Weinberg shall serve a copy of this order with notice of entry upon both Ashley Home Care Service and Lance Ashley by email and by hard copy at their last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; it is further

ORDERED that, together with the copy of this order with notice of entry served upon Defendants, moving counsel shall forward a notice directing both Defendants to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall

comply therewith, except that, in the event defendant Ashley intends instead to represent himself, he shall notify the Clerk of the Part of this decision in writing within said 30-day period; it is further

ORDERED that any new attorney retained by Defendants shall file a notice of appearance with the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) and the Clerk of the Part within 40 days from the date the notice to retain new counsel is mailed; it is further

ORDERED that no further proceedings may be taken against either Defendant without leave of this court for a period of 40 days after service on Defendants of the aforesaid notice to appoint a substitute attorney; it is further

ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that all parties are to appear on February 26, 2019 at 9:30 a.m. in Room 222 for a Preliminary Conference.

1/14/2019
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: